ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA AUTHORIZING THE MAYOR AND THE CITY CLERK, AS ATTESTING WITNESS, ON BEHALF OF THE CITY, TO ENTER INTO AN INTERLOCAL AGREEMENT BETWEEN THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA AND THE CITY OF HIALEAH, IN SUBSTANTIAL FORM AS ATTACHED HERETO AND MADE A PART HERETO AS EXHIBIT "1", TO LEASE AN IRREGULAR-SHAPED PARCEL OF LAND COMPRISING OF APPROXIMATELY 36,110 SQUARE FEET COVERING PROPERTY LOCATED AT 4775 EAST 1 AVENUE, HIALEAH, FLORIDA FOR AN INITIAL TERM OF 40 YEARS, FOR AN ANNUAL RENTAL RATE OF WITH SUCCESSIVE RENEWALS AT THE OPTION OF THE CITY, FURTHER, TO FINANCE, DESIGN, CONSTRUCT, MAINTAIN AND OPERATE A **PARKING GARAGE PROVIDING FOR** APPROXIMATELY 196 PARKING SPACES THAT WILL BE JOINTLY USED BY THE SCHOOL BOARD AND THE CITY FOR ITS RESPECTIVE ACTIVITIES SERVING HIALEAH SENIOR HIGH SCHOOL AND ITS PERFORMING ARTS CENTER AND THE MILANDER PARK COMPLEX. THROUGH Α JOINT AGREEMENT TO BE PREPARED, NEGOTIATED AND SIGNED BY THE PARTIES, SUBJECT TO AND COUNCIL **APPROVAL FURTHER** AUTHORIZING THE MAYOR OR DESIGNEE TO SIGN ALL DOCUMENTS AND AGREEMENTS IN FURTHERANCE THEREOF; REPEALING **ALL ORDINANCES PARTS** OR OF. ORDINANCES IN CONFLICT HEREWITH; PROVIDING PENALTIES FOR **VIOLATION** HEREOF; PROVIDING FOR A SEVERABILITY CLAUSE: AND **PROVIDING FOR** AN EFFECTIVE DATE.

WHEREAS, pursuant to Miami-Dade County Resolution No. R-91904 ("Cultural Facilities Resolution"), the voters approved the issuance of General Obligation Bonds in

the principal amount not to exceed \$552,155,000 to construct and improve, inter alia, cultural facilities ("Building Better Communities General Obligation Bonds"); and

WHEREAS, among the projects eligible for funding is Project No. 332, the Hialeah High School Performing Arts Center, having an allocation of \$10 million to fund the completion of this performing arts complex by acquiring equipment, developing support spaces for rehearsal, scene shop and technical theater training, and acquiring property and constructing parking facilities for the theater; and

WHEREAS, since the Milander Park Complex and the Hialeah High School Performing Arts Center, two cultural facilities in the City of Hialeah, lie in close proximity to each other, it is in the best interest of The School Board and the City to construct a single parking garage and associated improvements, for shared use through the expenditure of \$5 million of Building Better Communities General Obligation Bond funds; and

**WHEREAS,** pursuant to Miami-Dade County Resolution No. R-1276-07, Miami-Dade County modified the scope of Project No. 332 to allow for funding for the parking facilities in the scope as provided in the Interlocal Agreement; and

WHEREAS, the City and its elected officials recognize and agree that the construction of a new parking garage and associated improvements will serve a public purpose by benefiting The School Board, the City of Hialeah, Miami-Dade County and the community at large, and in furtherance thereof, the City approves the Interlocal Agreement to provide a framework for the financing, development, construction, maintenance, leasing and operation of the parking garage within the City; and

**WHEREAS**, the School Board of Miami-Dade County, Florida, has authorized this Interlocal Agreement pursuant to Board Action No. Revised Good Cause H-12, at its meeting of November 20, 2007.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

Section 1: The foregoing facts and recitations contained in the preamble to this ordinance are hereby adopted and incorporated by reference as if fully set forth herein.

Section2: The City of Hialeah, Florida hereby authorizes the Mayor and the City Clerk, as attesting witness, on behalf of the City, to enter into an Interlocal Agreement between The School Board of Miami-Dade County, Florida and the City of Hialeah, in substantial form as attached hereto and made a part hereof as Exhibit "1", to

lease an irregular-shaped parcel of land comprising of approximately 36,110 square feet covering property located at 4775 East 1 Avenue, Hialeah, Florida, for an initial term of 40 years, for an annual rental rate of \$1.00, with successive 10-year renewals, at the option of the City, and further, to finance, design, construct, maintain and operate a parking garage providing for approximately 196 parking spaces that will be jointly used by The School Board and the City for its respective activities serving Hialeah Senior High School and its performing arts center and the Milander Park Complex, through a joint use agreement, to be prepared, negotiated and signed by the parties, subject to City Council approval; and further authorizes the Mayor or his designee to sign all documents and agreements in furtherance thereof.

#### **Section 3:** Repeal of Ordinances in Conflict.

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

#### Section 4: Penalties.

Every person violating any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be punished by a civil penalty not to exceed \$500.00 within the discretion of the court or administrative tribunal having jurisdiction. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty prescribed above, the city may pursue other remedies such as abatement of nuisance, injunctive relief, administrative adjudication and revocation of licenses or permits.

# ORDINANCE NO. 08-29 Page 4

#### Section 5: Severability Clause.

If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

#### **Section 6:** Effective Date.

This ordinance shall become effective when passed by the City Council and signed by the Mayor or at the next regularly scheduled City Council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.

PASSED and ADOPTED this **22nd**day of **April** 2008. THE FOREGOING ORDINANCE OF THE CITY OF HIALEAH WAS Esteban Bovo PUBLISHED IN ACCORDANCE Council President WITH THE PROVISIONS OF FLORIDA STATUTE 166.041 PRIOR TO FINAL READING. Approved on this Way of Attest: 2008. Rafael E. Granado, City Clerk Mayor Julio Robaina Approved as to form and legal sufficiency:

Ordinance was adopted by a unanimous vote with Councilmembers Bovo, Caragol, Casals-Muñoz, Garcia-Martinez, Gonzalez, Hernandez, and Yedra voting "Yes".

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# INTERLOCAL AGREEMENT BETWEEN THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA AND THE CITY OF HIALEAH, FLORIDA

THIS INTERLOCAL AGREEMENT (the "Interlocal Agreement" or "Agreement") is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2008, by and between The School Board of Miami-Dade County, Florida, a public body corporate and politic existing under the laws of the State of Florida, its successors and assigns (hereinafter referred to as the "Board"), and The City of Hialeah, Florida, a Florida municipal corporation, its successors and assigns (hereinafter referred to as the "City"). The Board and City are sometimes referred to herein individually as a "Party", and collectively as the "Parties". The effective date (the "Effective Date") of this Interlocal Agreement shall be the latter date of execution by both Parties.

#### **RECITALS**

WHEREAS, pursuant to Miami-Dade County Resolution No. R-91904 ("<u>Cultural Facilities Resolution</u>"), the voters approved the issuance of General Obligation Bonds in the principal amount not to exceed \$552,155,000 to construct and improve, inter alia, cultural facilities ("<u>Building Better Communities General Obligation Bonds</u>"); and

WHEREAS, among the projects eligible for funding is Project No. 332, the Hialeah High School Performing Arts Center, having an allocation of \$10 million to fund the completion of this performing arts complex by acquiring equipment, developing support spaces for rehearsal, scene shop and technical theater training, and acquiring property and constructing parking facilities for the theater; and

WHEREAS, since the Milander Park Complex and the Hialeah High School Performing Arts Center, two cultural facilities in the City of Hialeah, lie in close proximity to each other, it is in the best interest of the Board and the City to construct a single parking garage and associated improvements, for shared use through the expenditure of \$5 million of Building Better Communities General Obligation Bond funds; and

WHEREAS, pursuant to Miami-Dade County Resolution No. R-1276-07, Miami-Dade County modified the scope of Project No. 332 to allow for funding for the parking facilities in the scope as provided herein; and

WHEREAS, the Parties recognize and agree that the construction of a new parking garage and associated improvements, as described in Section 5 hereof (collectively, the "Parking Garage"), will serve a public purpose by benefiting the Board, the City, the County and the community, and in furtherance thereof, the Parties have agreed to enter into this Interlocal Agreement to provide a framework for the financing, development, construction, maintenance, leasing and operation of the Parking Garage within the City; and

WHEREAS, the City Council of the City of Hialeah, Florida, has authorized this Agreement by the adoption of Ordinance No. 2008 - 29, at its meeting of April 22, 200 Y 2008; and

**WHEREAS**, the School Board of Miami-Dade County, Florida, has authorized this Agreement in accordance with Board Action No. Revised Good Cause H-12, at its meeting of November 20, 2007.

- **NOW, THEREFORE,** in consideration of the Sum of \$1.00 and other consideration, the receipt and sufficiency of which is hereby acknowledged, and the terms and conditions, promises and covenants hereinafter set forth, the Parties agree as follows:
- Section 1. Recitals Incorporated. The above recitals are true and correct and are incorporated herein.
- Section 2. <u>Purpose</u>. The purpose of this Interlocal Agreement is to provide for the construction by the City and joint use by the Parties of the Parking Garage on a portion of the Hialeah Senior High School ("<u>School</u>") campus, on those lands owned by the Board and more particularly described or depicted in <u>Exhibit "A"</u> hereto ("<u>Demised Premises</u>").

The Parties agree that the development, construction, and implementation of the Parking Garage shall be subject to and in compliance with all applicable laws, codes, ordinances, rules and regulations of Federal, State and Local Governments, including the Americans with Disabilities Act, as they apply to this Agreement.

Section 3. Responsibility for Construction. The City shall be responsible for any and all aspects of the funding, planning, design and construction of the Parking Garage, subject to the terms and conditions of this Interlocal Agreement. The City shall perform the work required of it hereunder through design professionals (including without limitation architects and engineers), consultants, contractors or other persons, firms or entities (collectively, "Contractors") selected by the City for the performance of such work in accordance with the terms hereof, and through its management, administrative, supervisory and other services as general contractor, as further defined in Section 6. Procurement by the City of any design professionals, consultants, contractors or other persons, firms or entities, shall be done in conformance with all applicable Florida Statutes and the rules, regulations, codes and policies of the City. The City shall further obtain a Performance & Payment Bond or other such bonds as required under Section 255.05 Florida Statutes, using the services of a Surety with an A.M. Best rating of "A-" or better and a Financial Rating of at least V.

Section 4. <u>Project Documents</u>. In order to effect the transactions contemplated by this Agreement, the Board and City shall enter into a joint use agreement (the "<u>Joint Use Agreement</u>"), setting forth the terms and conditions for the joint use of the Parking Garage and any other amenities to be constructed and located on the Demised Premises by the City as a part of this project, which amenities are identified as the "<u>Parking Garage Amenities</u>" on the Conceptual Layout Plan attached hereto as <u>Exhibit "B"</u> (as it may be revised and modified by mutual agreement of the Parties from time to time). The Parties shall use reasonable efforts to finalize and execute the Joint Use Agreement within one-hundred twenty (120) days of the Effective Date of the Interlocal Agreement.

The Interlocal Agreement, Joint Use Agreement and any other related documents necessary to facilitate the construction and operation of the project are sometimes referred to herein collectively as the "Project Documents". The Interlocal Agreement and Joint Use Agreement will require the City to comply with the Jessica Lunsford Act to the extent applicable.

The Parties agree that this Interlocal Agreement is intended to address the general terms and conditions relating to the development, construction and use of the Parking Garage and to provide a framework for the implementation of the project described herein. The Parties further agree that the Project Documents required by this Interlocal Agreement will govern the rights and obligations of the Parties with respect to the development, financing, construction, maintenance, repair and operation of the Parking Garage. Accordingly, the Parties shall negotiate and finalize the terms, conditions and provisions of the Project Documents, and this Interlocal Agreement shall be conditioned upon the final agreement as to the form of and/or execution of all such Project Documents. Other than for the Joint Use Agreement, in the event that any term, condition or provision of any Project Document conflicts with any term, condition or provision of this Interlocal Agreement governing the same subject matter, the term, condition or provision of this Interlocal Agreement shall control. In the event that any term, condition or provision of the Joint Use Agreement conflicts with any term, condition or provision of this Interlocal Agreement governing the same subject matter, the term, condition or provision of the Joint Use Agreement shall control.

Section 5. <u>Project Description</u>. The City and Board agree that the Project shall consist, substantially, of the following scope of work:

- a. Design and construction of a three (3) story parking structure, comprising approximately 200 parking spaces, and all associated improvements, as further identified in Exhibit "B".
- b. Subject to the provisions of Section 4, the Joint Use Agreement shall, at a minimum:
  - (i) address the consideration for, hours of operation and use of, and maintenance and repair of the Parking Garage.

- (ii) grant the City the right to make minor alterations, renovations and improvements to the Parking Garage, provided that the quality of all such alterations and improvements are consistent with the then current governing rules and standards for Parking Garages, and will not result in a facility of substantially lesser size and scope as existed prior to such alteration or improvement, and subject further to the terms, conditions and limitations (if any) of the Joint Use Agreement.
- (iii) provide for the City to operate and maintain the Parking Garage. The City agrees to use its best efforts to schedule all maintenance functions on the Demised Premises so as to limit any impact on School operations.
- (iv) include provisions which require compliance with all applicable laws, codes, ordinances, rules and regulations dealing with the operation of the Parking Garage.
- (v) grant the City the right, at the City's sole expense, to make substantive improvements or renovations to the Parking Garage, subject to review and concurrence of the Board's designee.
- (vi) other than in the event of an emergency, allow the Board, or any of its agents, after first providing reasonable notice to the City, the right to enter said Demised Premises and Parking Garage during the City's period of use to examine the same, provided these actions do not in any way interfere with the City's use of the Parking Garage.
- (vii) provide that, during the term of the Agreement, the City shall retain all right, title and interest to the improvements constructed and paid for by the City, with the City to immediately convey title to said improvements to the Board, without compensation, at the termination, cancellation or expiration of this Agreement.
- (viii) include a provision agreeing that there will be no discrimination against any person based on disability, gender, sexual orientation, age, religion, race, color, creed or national origin in the use of the Demised Premises and Parking Garage. It is expressly understood that upon a determination by a court of competent jurisdiction that discrimination has occurred, such an event shall be treated as a Default hereunder.
- (ix) include language dealing with the possible operation of the Parking Garage by a private concessionaire ("Parking Garage Operator"),

subject to review and approval of said Parking Garage Operator by both Parties.

(x) include provisions for appropriate Liability and any other insurance required of the City or its Parking Garage Operator, as applicable. The City shall provide Property Insurance for the Parking Garage. Said insurance shall remain in place for the term of this Agreement.

If the City operates the garage after completion of construction, the City shall provide appropriate Liability Insurance in amounts acceptable to the City and the Board's respective Risk Management departments, or in lieu of Liability Insurance, the City may provide evidence of an ongoing Self-Insurance Program covering the City's officers, members and employees, subject to the limitations of Section 768.28 Florida Statutes. If the City contracts the operation and/or maintenance of the Parking Garage to a third-party, the third-party will provide Liability Insurance and other appropriate insurance in amounts acceptable to the City and Board's respective Risk Management departments, with the Board to be named as an additional insured.

- (xi) Include a provision agreeing that the City shall pay any and all assessments, fees, service fees, or taxes imposed upon the Demised Premises as a result of the construction of the improvements by the City.
- (xii) include a provision agreeing that, effective with the Commencement Date, the City shall, at its own cost and expense, cause all utilities serving the Demised Premises to be separately metered and placed in its name, and shall thenceforth pay all such utility charges including, but not limited to, connection and service charges arising out of the use of the Demised Premises for waste collection, electricity, water and sewer, storm water and for all other services, including telecommunications.
- (xiii) include a provision that, in addition to an event of Damage and Destruction, the City shall have the right to cancel this Agreement at any time by giving the Board written notice at least one (1) year prior to the effective date of said cancellation. The Board shall only have the right to cancel this Agreement in the event the City defaults in fulfilling any of its material covenants or obligations under the Agreement or Joint Use Agreement and fails to cure such default as provided under the Default section of the Joint Use Agreement.

(xiv) include a provision that, in the event the Demised Premises should be destroyed or so damaged by fire, windstorm or other casualty to the extent the improvements are rendered untenantable or unfit for the purposes intended, the City shall have the right to cancel this Agreement by giving written notice to the Board, in which event the City shall cause all improvements to be removed and the Demised Premises to be restored to the same or better condition than existed before the Commencement Date of this Agreement, within one hundred eighty (180) days of the said casualty, or other reasonable period of time as mutually agreed to by the Parties. However, if the City fails to cancel this Agreement, the City shall cause all improvements located within the Demised Premises to be repaired and placed in a safe, secure and useable condition, in compliance with then current code, and compatible for School and community use, within one hundred eighty (180) days from the date of said damage or destruction, or other reasonable period of time as mutually agreed to by the Parties. Should the improvements not be repaired and rendered tenantable within the aforementioned time period, then the Board may, at its sole option, place the City in default.

Section 6. Construction of Projects. Except as hereinafter provided, the City shall be responsible for administration of the planning, design, development and construction of the Parking Garage described in Section 5, and for the demolition of existing improvements located on the Demised Premises, if any, subject to the terms, conditions and provisions of the Project Documents. To that end, the City shall use the City Architect in the design of the Parking Garage and the City will also act as general contractor. The City will employ the services of appropriately licensed subcontractors for the shell construction, for the foundation and for the manufacture and installation of the pre-cast manufactured garage structure, electrical work, plumbing work, fire sprinkler manufacture and installation, elevator manufacture and installation, security cameras, fencing, irrigation and landscaping. The City represents and warrants as follows:

- a. The City shall select Contractors in accordance with all applicable laws, rules and regulations, and shall contract with the selected Contractors to construct the facilities.
- b. The Parking Garage shall be designed by the City's design professionals through the re-use of existing plans or through selected Contractors in accordance with all laws, codes, ordinances, rules and regulations applicable to the construction of a Parking Garage. The City shall design and develop the plans, specifications and construction documents, including construction schedules (collectively, the "Design and Construction Documents") necessary for the construction of the facilities as contemplated herein.

- c. The Parking Garage will be designed, developed and constructed substantially in accordance with (i) the terms of this Interlocal Agreement, (ii) the Design and Construction Documents, and (iii) the construction schedule attached to this Interlocal Agreement by the City as composite Exhibit "C". The construction schedule will be provided by the City to the Board after the City awards the construction contract and agrees to construction schedules with its Contractor(s) for such facilities, and which schedule shall provide for a Certificate of Occupancy for the project to be secured no later than twenty-four (24) months following the commencement of construction.
- d. The construction of the Parking Garage shall be staged in consultation with the School administrator, and carried out in such a manner as not to impact operations of the School.
- e. The City shall be responsible for ensuring that any Contractor and its subcontractors' services and material meet applicable local and state standards for licensing and competency. The City shall be responsible for ensuring that each Contractor and its subcontractors maintain in effect the insurance customarily required by the City for the particular service and material provided for the respective work. At a minimum, throughout the period of construction, the City shall ensure that Contractors and subcontractors maintain Workers' Compensation/Employer's Liability Insurance, General Liability Insurance combined single limit for bodily injury and property damage in the amount of \$1,000,000 per occurrence, and Automobile Liability Insurance. For the General Liability Insurance and Automobile Liability Insurance the City and the Board shall each be named as additional insureds.
- f. Prior to the commencement of the work, the City shall submit a site plan to the Board or its designee verifying conformance with the above scope of work. The Board's review and approval of the plans shall not be unreasonably delayed, conditioned or withheld.
- g. The work shall comply with the Florida Building Code and the Americans with Disabilities Act, and the City, through the City of Hialeah Building Department, shall retain the sole responsibility to issue construction permits, inspect the work and issue a Certificate of Occupancy, in conformance with all applicable laws, rules, statutes and any other jurisdictional requirements. Construction of the work shall be limited to the Demised Premises, and the City shall have no authority to access any other portion of the School without the specific authorization of the School administrator. The City shall ensure that all Contractors, including their employees or agents, contracted by the City to perform improvements on the Demised Premises, are in compliance with the Jessica Lunsford Act, as it may be amended from time to time. The City shall cause any Contractor

performing work on or near the Demised Premises to indemnify, defend and hold harmless the Board, its employees and representatives from any and all liability, damages and claims, and to name the Board as an additional insured with respect to any insurance policies provided by the Contractor to the City in connection with any construction contract for any work performed. At the completion of the work, the City shall secure an inspection of the Demised Premises from the Board's designee, verifying that the work was confined to the Demised Premises and completed in general conformance with the provisions of <a href="Exhibit "B"">Exhibit "B"</a>, and shall not release its Contractors from their contractual obligations or make final payment to the Contractors until the Board's designee attests to the satisfactory completion of the work. The City shall cause its Contractors to implement appropriate safety measures during the work to protect students, staff and guests at the School from unsafe conditions.

- h. The City shall use its best efforts to begin construction of the work in an expeditious manner. Once construction begins, and subject to the provisions of Articles 6d and 14a, the City shall continue construction related activities unabated, so as to complete construction of the work with all deliberate speed and due diligence.
- i. The City shall procure Property Insurance ("all risk") for the completed cost of the Parking Garage and any other improvements constructed by it on the Demised Premises, in an amount not less than the estimated replacement value of the improvements at the time of Final Completion. The maximum deductible for perils other than wind and hail shall be \$25,000 per occurrence. The maximum deductible for the perils of wind and hail shall not exceed 5% of the actual value of the subject property.
- j. Given the intended joint use of the Parking Garage by students of Hialeah Senior High School and invitees and guests of the Hialeah High School Performing Arts Center, and in conformance with Section 8a of this Agreement, the Board's designee shall have the right to review and approve the Design and Construction Documents for the purpose of assuring that the design of the Parking Garage includes all necessary provisions dealing with student safety and proper school operation. At a minimum, the design shall provide for monitoring by the School of Closed Circuit Television cameras within the Parking Garage and for the proper enunciation of the Parking Garage fire alarm within the School.

# Section 7. Ownership and term of lease for Demised Premises and Parking Garage.

a. The Demised Premises is owned by the Board in fee simple, and the Board shall retain fee simple title to said parcel of land. Subject to the provisions

of Section 5vii, title to the improvements constructed by the City on the Demised Premises shall be in the name of the City. The Board, during the period of construction, shall deliver exclusive possession of the Demised Premises to the City as of the Possession Date (as defined in Section 12 below).

- b. The Board, as lessor, shall grant the City, as lessee, a fully net lease (i.e. the City, as lessee, shall be responsible for all carrying costs and charges of the property, or as otherwise set forth in the Joint Use Agreement) for an initial term of forty (40) years, commencing on the date defined in Section 14t of this Agreement "Commencement Date", at a rental rate of one dollar (\$1.00) per year. The City shall have the right to renew the term for successive renewal periods of ten (10) years each, subject to the following (i) the City shall not be in default under the Interlocal Agreement or Joint Use Agreement and have failed to cure same within the applicable notice and cure periods at the time of renewal, (ii) the City shall have notified the Board in writing of its election to renew the Interlocal Agreement no later than one (1) year prior to the expiration of the term thereof (i.e. by the end of the 39<sup>th</sup> lease year, 49<sup>th</sup> lease year, etc., provided, however, each Party shall make every reasonable effort to contact the other to obtain a determination from the City as to whether or not it wishes to renew, before the end of the initial renewal election period or each successive renewal election period), and (iii) within ninety (90) days following receipt of such notice, the Board and City shall review any issues relating to the maintenance and operation of the Parking Garage and shall use good faith efforts to resolve any such issues to the reasonable satisfaction of the Parties.
- All costs of maintenance and repair of the Parking Garage shall be the C. responsibility of the City, as further defined under the Joint Use Agreement. The City shall have the right, at no expense to the Board, to develop, construct, alter, replace, renovate and improve the Parking Garage, and add additional permanent improvements on the Demised Premises, in compliance with the terms of this Agreement and the Joint Use Agreement, as the needs of the public. School and facility dictate, provided that such improvements will not create a burden on the operation of the School, as determined solely by the Board, and the quality of all such alterations and improvements are consistent with the then current governing rules and standards for public educational facilities and will not result in a type or types of facilities of substantially lesser size and scope as those in existence prior to such alteration or improvement. Likewise, should the original construction or any alteration, replacement, renovation or improvement result in a condition which obstructs or unreasonably impedes the Board or the School from full use of the Parking Garage for its intended function, the City shall promptly and fully remedy the condition, at its sole cost and expense.

d. This Interlocal Agreement shall grant to any Contractor performing construction work on behalf of the City such temporary licenses and access rights in the Demised Premises as may be necessary to develop and construct the Parking Garage as contemplated in Section 6 above and in the Project Documents; provided, however, that nothing herein contained shall be construed to authorize any lien upon the Demised Premises or the fee and/or leasehold interests of the Parties therein. The Joint Use Agreement shall contain such other terms, conditions and provisions as the Parties shall mutually agree, including subordination and nondisturbance provisions reasonably satisfactory to the Parties.

#### Section 8. Financing and Payment of Costs.

- a. The City shall invite the Board's designee to all construction meetings dealing with the ongoing nature of the project and provide him with frequent updates and status reports on the progress of the work and, in addition, shall keep the Board apprised, in writing on a quarterly basis, of the status of the planning, design, development and construction of the Parking Garage, and shall take into consideration issues or objections that the Board may have with respect to changes to the Parking Garage; however, the ultimate decision and control with respect to such development and construction shall remain with the Board. The terms of this subsection 8a shall prevail over any conflicting or inconsistent provisions contained in this Interlocal Agreement or any of the Project Documents, including without limitation Sections 5 and 6 hereof.
- b. The City shall be responsible for all costs and expenses associated with the design, development, construction and financing of the Parking Garage, except as otherwise expressly provided in this Agreement, the Joint Use Agreement and any other Project Document governing the construction of the Parking Garage.

Section 9. Construction of Other Projects. The City has advised the Board that, subsequent to the date of this Interlocal Agreement, the City intends to construct certain off-site improvements consisting primarily of renovations to the existing Auditorium and Cultural Arts Center and adjacent parking garage, on a portion of the Milander Park Complex. In the event of completion of each such project by the City, the City shall make such facilities available to the Board at a future date, through a separate joint use agreement, if so requested by the Board.

#### Section 10. Demolition of Facilities.

a. The demolition by the City of any improvements located on the Demised Premises shall commence and be completed in accordance with the construction schedule attached to this Interlocal Agreement as <a href="Exhibit">Exhibit "C"</a>, subject to the provisions of Section 6a. The City agrees to follow the

Board's customary protocol with respect to the assessment of any environmental conditions following said demolition. The cost of such demolition shall be part of the Parking Garage project. At the conclusion of the demolition, the site shall be free of all debris, environmentally clean from the impact resulting from the demolition and ready for immediate construction.

- b. With respect to any environmental conditions that exist on the Demised Premises as of the Effective Date which require remediation under applicable environmental laws (if any), the Parties agree as follows:
  - (i) with respect to any environmental conditions affecting the Demised Premises, whether known or unknown, the City shall be solely responsible for the remediation of all such environmental conditions at its sole cost and expense.
  - the City shall have the option (but not the obligation) to immediately terminate this Interlocal Agreement, including without limitation any obligation of the City to construct the Parking Garage. In the event that the City terminates this Interlocal Agreement under the foregoing provision, the Joint Use Agreement shall simultaneously terminate without further action by the Parties.
  - (iii) any required remediation of environmental conditions hereunder will be performed by the City, at its sole cost and expense, under the joint supervision of the Board and the City.

For purposes hereof, an environmental condition shall be deemed "known" only if it is disclosed in an environmental report conducted by the City and received by the Board prior to the Effective Date. Except as may be disclosed in said report, the Board has no written notice or actual knowledge of the existence of "hazardous materials" on the Demised Premises, or any past or present generation, recycling, reuse, storage, handling, transport and/or disposal of any hazardous materials on such parcel, or any failure of such parcel to comply with applicable local, state or federal environmental laws, regulations, rules or requirements. As used herein, the term "hazardous materials" shall mean any substance or material defined or designated as a hazardous or toxic waste material or substance, or other similar term, by any applicable federal, state or local environmental statute, regulation or ordinance. This Section 10 is intended to address the responsibility of the Parties with respect to environmental conditions that exist on the Demised Premises as of the Effective Date, whether known or unknown, which require remediation under applicable environmental laws. Any new environmental conditions which did not exist as of the Effective Date, but rather arise thereafter, shall be handled in the

manner set forth in the Project Documents, but consistent with the terms and conditions set forth herein.

#### Section 11. Additional Requirements and Covenants.

- a. <u>Permitting</u>. As previously described in Section 6g, the City shall retain sole authority and responsibility for the permitting and inspection of all work, as required under applicable law.
- b. <u>Zoning</u>. The City shall comply with Section 1013.33, Florida Statutes, to the extent applicable, including the determination that the Parking Garage is consistent with the City's comprehensive plan and land development regulations, and the site plan review process. The City agrees to expedite the determination of consistency of such projects with the City's comprehensive plan and land development regulations to the fullest extent possible, and agrees that the final determination of consistency as to use shall be made no later than the Effective Date.
- c. <u>Indemnities</u>. Any direct construction contracts entered into by the City for the construction of the Parking Garage shall include indemnities from the Contractors that are consistent with the standard indemnities obtained by the City from its contractors in connection with the construction of similar facilities. Such indemnities shall name both the City and the Board as indemnified parties. All indemnities extended by the City under the Project Documents shall be deemed to be subject to the provisions and monetary limitations of Section 768.28(5), whether or not the indemnification provision expressly so provides.

Section 12. <u>Delivery of Possession</u>. The Board represents and warrants to the City that there are no leases or other occupancy agreements, either written or oral, which affect the Demised Premises. The City may take possession of the Demised Premises immediately subsequent to full execution of this Agreement by both Parties or such other later date as may be mutually agreed to by the Parties or their respective designees (such date to be referred to herein as the "Possession Date").

Section 13. As Is. The City hereby represents and warrants that (i) it has been given a full opportunity to inspect the Demised Premises, (ii) has conducted any and all inspections that it deems necessary or appropriate to evaluate such property and whether it deems same to be suitable for the intended use contemplated in this Interlocal Agreement and in the Project Documents, and (iii) accepts the property in its "as—is" condition, with all faults, and without representations, warranties, covenants and indemnities of any kind, express or implied, except only the representations, warranties, covenants and indemnities expressly set forth in this Interlocal Agreement and in the Project Documents. Prior to the Effective Date, the City or its Contractor shall have the right to enter the Demised Premises to conduct any environmental audits that it deems advisable. Prior to any such occurrence, the City shall first provide the Board with an

Access Agreement, which shall, at a minimum, indemnify the Board from any liabilities arising as a result of the environmental audit and also agreeing to restore the site to the condition that existed prior to the environmental audit.

#### Section 14. Miscellaneous.

- a. UNAVOIDABLE DELAY. In the event that the City is unable to meet any deadline for performance of the City's obligations under this Interlocal Agreement or complete construction of the Parking Garage in accordance with Section 6 hereof, in either case due to any circumstance beyond the control of the City, including without limitation, the occurrence of a force majeure event, then the time for such performance shall be extended for such reasonable period of time as may be required by such circumstance or the occurrence of such event. The City shall be responsible for any cost overrun as a result of such delay. The term "force majeure" shall include without limitation labor strikes (whether lawful or not), fire, hurricanes, adverse weather conditions, unavoidable casualties, inability to obtain labor or materials, Acts of God, vandalism, terrorism, civil unrest, moratoriums and the like.
- b. NOTICES. All notices, requests, consents, and other communications under this Agreement ("Notices") shall be in writing and shall be personally delivered, mailed by First Class Mail, postage prepaid, or sent by overnight delivery service, to the parties as follows:

If to the School Board:	Superintendent Miami-Dade County Public Schools 1450 N.E. Second Avenue, Room 912 Miami, Florida 33132 Fax: (305) 995-1488
With Copies to:	Board Attorney The School Board of Miami-Dade County 1450 N.E. Second Avenue, Room 400 Miami, Florida 33132 Fax: (305) 995-1412  Miami-Dade County Public Schools Facilities Planning Department 1450 N.E. Second Avenue, Room 525 Miami, Florida 33132
	Fax: (305) 995-4760
If to the City:	City Mayor City of Hialeah 501 Palm Avenue

	Hialeah, Florida 33010 Fax: (305) 883-5992	
With a Copy to:	City Attorney City of Hialeah 501 Palm Avenue Hialeah, Florida 33010 Fax: (305) 883-5896	

Except as otherwise provided in this Interlocal Agreement, any Notice shall be deemed received only upon actual delivery at the address set forth above. Notices delivered after 5:00 p.m. (at the place of delivery) or on a non-business day, shall be deemed received on the next business day. If any time for giving Notice contained in this Agreement would otherwise expire on a non-business day, the Notice period shall be extended to the next succeeding business day. Saturdays, Sundays, and legal holidays recognized by the United States government or the City shall not be regarded as business days. Counsel for the Board and counsel for the City may deliver Notice on behalf of the Board and the City, respectively. Any party or other person to whom Notices are to be sent or copied may notify the other parties and addressees of any change in name or address to which Notices shall be sent by providing the same on five (5) days written notice to the Parties.

- c. DEFAULT. An event of default shall be deemed to have occurred by either Party to this Interlocal Agreement if such Party fails to observe or perform any covenant, condition or agreement of this Interlocal Agreement, or breaches a representation contained herein, and such failure or breach continues for a period of thirty (30) days after written notice specifying such default and requesting that it be remedied is sent to the defaulting party by the non-defaulting party; provided, however, that if the default is curable but cannot be cured within thirty (30) days, then the defaulting party shall have such additional time as is reasonably needed to cure such default so long as the defaulting party promptly commences and diligently pursues the cure of such default to completion. If an event of default shall have occurred and shall continue, the non-defaulting party shall be entitled to all remedies available at law or in equity, which may include, but not be limited to, the right to damages and/or specific performance.
- d. ENFORCEMENT OF AGREEMENT. In the event that either Party is required to enforce this Interlocal Agreement by court proceedings or otherwise, then the Parties agree that each Party shall be responsible for all fees and costs incurred by such Party, including all attorneys' fees and costs (of trial, alternative dispute resolutions, or appellate proceedings).

- e. ENTIRE AGREEMENT. This Interlocal Agreement and other Project Documents, including the Joint Use Agreement, embody the entire agreement of the Parties relating to the subject matter hereof, and supersede all prior written and/or oral understandings or agreements with respect thereto.
- f. AMENDMENTS. Amendments and Addenda to and waivers of the provisions contained in this Interlocal Agreement may be made only by an instrument in writing which is executed by both Parties.
- g. JOINT PREPARATION. This Interlocal Agreement has been negotiated fully between the Parties as an arm's length transaction. Both Parties participated fully in the preparation of this Interlocal Agreement and received the advice of counsel. In the case of a dispute concerning the interpretation of any provision of this Interlocal Agreement, both Parties are deemed to have drafted, chosen, and selected the language, and the doubtful language will not be interpreted or construed against any Party.
- h. ASSIGNMENT. Other than as defined below, this Interlocal Agreement may not be assigned, in whole or in part, by any Party without the prior written consent of the other Party, which may be granted or withheld in its sole discretion. Other than as provided in this Interlocal Agreement and the Joint Use Agreement, the Board's prior consent shall not be required with respect to any design professionals, contractors or other parties engaged by the City in connection with or for the purpose of performing any of the City's obligations hereunder, provided the selection and engagement by the City of said parties complies with all applicable rules, regulations, statutes, City Codes and Board Rules. In the event the Board obtains Certificate of Participation financing under its Master Lease Program covering the Demised Premises, in whole or in part, then the Board shall have the sole authority to assign the Interlocal Agreement and Joint Use Agreement under the Master Lease, as necessary.
- i. THIRD PARTY BENEFICIARIES. Except as otherwise expressly provided, this Interlocal Agreement is solely for the benefit of the Board and the City and no right or cause of action shall accrue upon or by reason, to or for the benefit of any third party not a formal party to this Interlocal Agreement. Except as otherwise expressly provided, nothing in this Interlocal Agreement expressed or implied is intended or shall be construed to confer upon any person or corporation other than the Board and the City any right, remedy, or claims under or by reason of this Interlocal Agreement or any of the provisions or conditions of this Interlocal Agreement; and all of the provisions, representations, covenants, and conditions contained in this Interlocal Agreement shall inure to the sole benefit of and shall be binding upon the Board and the City, and their respective representatives, successors, and assigns.

- j. JOINT DEFENSE. In the event that the validity of this Agreement is challenged by a third party or parties unrelated to the Parties through legal proceedings or otherwise, the Parties hereto agree to cooperate with each other in defense of this Agreement, with each such Party to bear its own attorney's fees and costs associated with such defense.
- k. SEVERABILITY. The invalidity or unenforceability of any one or more provisions of this Interlocal Agreement shall not affect the validity or enforceability of the remaining portions of this Interlocal Agreement or any part of this Interlocal Agreement not held to be invalid or unenforceable.
- I. TIME OF ESSENCE. The Parties acknowledge that time is of the essence in the performance of all obligations required hereunder and all "days" referenced herein shall be deemed "calendar days" unless otherwise specifically set forth.
- m. CONTROLLING LAW. This Interlocal Agreement and the provisions contained herein shall be construed, interpreted, and controlled according to the laws of the state of Florida. Venue for any dispute shall be in Miami-Dade County, Florida.
- n. AUTHORIZATION. The execution of this Interlocal Agreement has been duly authorized by the Board and the City. The Board and the City have complied with all the requirements of law in connection with the execution and delivery of this Interlocal Agreement and the performance of their respective obligations hereunder. The Board and the City have full power and authority to comply with the terms and provisions of this instrument.
- o. HEADINGS FOR CONVENIENCE ONLY. The descriptive headings in this Interlocal Agreement are for convenience only and shall not control nor affect the meaning or construction of any of the provisions of this Interlocal Agreement.
- p. COUNTERPARTS. This Interlocal Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original; however, all such counterparts together shall constitute, but one and the same instrument. Signature and acknowledgments pages, if any, may be detached from the counterparts and attached to a single copy of this document to physically form one document.
- q. JURY TRIAL WAIVER. The Parties waive trial by jury in any action, proceeding or counterclaim brought by either of the Parties hereto against the other for any matter whatsoever arising out of or in any way connected with this Interlocal Agreement.
- r. AUTHORITY OF SUPERINTENDENT AND MAYOR. For the purposes of

this Agreement, the Superintendent of Schools or his designee, has been designated by the Board to grant or deny all approvals dealing with the design and construction of the Parking Garage, and the Superintendent of Schools and Mayor of the City of Hialeah have been the parties designated by the Board and City, respectively, to grant or deny all approvals required by this Agreement, including canceling this Agreement as provided for herein.

s. LIABILITY AND INDEMNIFICATION. Subject to the limitations included within Section 768.28, Florida Statutes and subject to the monetary limits stated in Section 768.28, Florida Statutes, whether the claim is in contract or in tort, the City shall not be liable for any damage or injury which may be sustained by the Board or any persons on the Demised Premises, other than damage or injury resulting from the negligence or improper conduct on the part of the City, its agents, representatives or employees, or failure of the City to perform its covenants under this Agreement.

Subject to the limitations included within Section 768.28, Florida Statutes and subject to the monetary limits stated in Section 768.28, Florida Statutes, whether the claim is in contract or in tort, the Board shall not be liable for any damage or injury which may be sustained by the City or any persons on the Demised Premises, other than damage or injury resulting from the negligence or improper conduct on the part of the Board, its agents, representatives or employees, or failure of the Board to perform its covenants under this Agreement.

The Board covenants and agrees that it shall indemnify, hold harmless and defend the City, from and against any and all claims, suits, actions, damages or causes of action arising from or in connection with the Board's use and occupancy of the Demised Premises during the term of this Agreement, for any personal injury, loss of life or damage to property sustained in or about the Demised Premises, to the extent of the limitations included within Section 768.28, Florida Statutes and subject to the monetary limits stated in Section 768.28, Florida Statutes, whether the claim is in contract or in tort.

The City covenants and agrees that it shall indemnify, hold harmless and defend the Board, from and against any and all claims, suits, actions, damages or causes of action arising from or in connection with the City's use and occupancy of the Demised Premises during the term of this Agreement, for any personal injury, loss of life or damage to property sustained in or about the Demised Premises, to the extent of the limitations included within the Section 768.28, Florida Statutes and subject to the monetary limits stated in Section 768.28, Florida Statutes, whether the claim is in contract or in tort.

Nothing in this Agreement is intended to operate as a waiver of the sovereign immunity of either Party.

t. COMMENCEMENT DATE. This Agreement shall commence on the same date as the date that the funding agreement between Miami-Dade County and the City of Hialeah is fully executed and becomes effective, a copy of which funding agreement shall be made an Exhibit to this Interlocal Agreement (Exhibit "D"). However, construction may only begin on the Demised Premises after receipt by the School District's Planning Officer, of written verification from the City that funding, in the full amount necessary to complete construction of the Parking Garage, is in place and available to fund the work. The written notice shall further verify that nothing in the funding agreement or other related agreements entered into by the City shall in any way diminish the Board's rights or place any additional obligations or liabilities on the Demised Premises or the Board.

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be executed in their names by their duly authorized officers and the corporate seals to be affixed all as of the day and year first above written.

CITY OF HIALEAH FLORIDA

By:

Julio Rotairia

Mayor

ATTEST:

By:

Rafael E. Granado, City Clerk

APPROVED AS TO FORM:

By:

William M. Grodnick City Attorney

THE SCHOOL BOARD OF MIAMIDADE COUNTY, FLORIDA

By:

Rudolph F. Crew, Ed D
Superintendent of Schools

IN WITNESS WHEREOF, the Parties have caused this Interlocal Agreement to

APPROVAD AS TO FORM AND LEGAL SUFFICIENCY:

By: JulieAnn Rico, Esq.

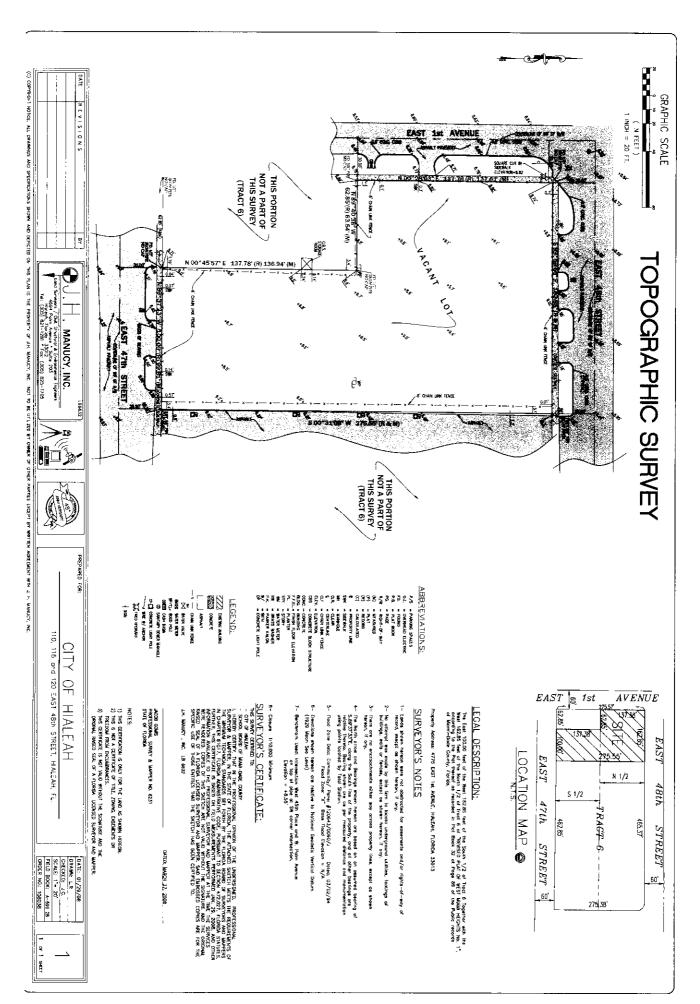
School Board Attorney

STATE OF FLORIDA ) COUNTY OF MIAMI-DADE )	SS:			
<u>cepril</u> , 2008 by Julio F				
[NOTARIAL SEAL]	Notary:			
STATE OF FLORIDA )	SS:			
COUNTY OF MIAMI-DADE )				
The foregoing instrument was acknowledged before me this day of, 2008 by Rudolph F. Crew, as Superintendent, of THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, a public body corporate and politic existing under the laws of the State of Florida, on behalf of the School Board. He personally appeared before me, and is personally known to me or produced as identification.				
[NOTARIAL SEAL]	Notary: Print Name: My Commission expires:			

#### EXHIBIT A

#### **LEGAL DESCRIPTION OF DEMISED PREMISES**

The East 100.00 feet of the West 162.85 feet of the South ½ of Tract 6, together with the West 162.85 feet of the North ½ of Tract 6 of "REVISED PLAT OF WEST MIAMI HEIGHTS No. 1", according to the Plat thereof, as recorded in Plat Book 32 at Page 69 of the public records of Miami-Dade County, Florida. All as depicted on the attached Topographical Survey dated January 29, 2008, and prepared by J.H. Manusy, Inc.



Page 2 of 2

### **EXHIBIT B**

## **CONCEPTUAL LAYOUT PLAN - PARKING GARAGE AMENITIES**

All as per Architectural drawings prepared by Angel H. Lamela, Architect, pages A-1 through A-9, dated January 18, 2008, as revised February 22, 2008, incorporated and attached hereto by reference.

### **EXHIBIT C**

# **CONSTRUCTION SCHEDULE**

To be attached to this Agreement subsequent to award by the City of the construction contract(s), as stipulated in Section 6 (c).

### **EXHIBIT D**

# FUNDING AGREEMENT BETWEEN MIAMI-DADE COUNTY AND THE CITY OF HIALEAH

To be attached to this Agreement subsequent to full execution of the funding agreement between Miami-Dade County and the City of Hialeah, as stipulated in Section 14 (t).

# Granado, Rafael E

From: Sent:

Lagomacini, Jeffrey

To:

Wednesday, April 30, 2008 1:20 PM

Subject:

Granado, Rafael E Interlocal agreement

Ralph,

I spoke to Mike Levine - he received the executed agreements in the mail today.  $m{\#}$ 

He was to assure that the dates on agrements read April 28, 2008 on the original you have.

Thank you, Jeffrey Lagomacini City of Hialeah